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The Views of Ancient Philosophers and Modern Criminal Law

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Abstract. The research emphasizes the demand for the philosophy of criminal law as such, as well as reveals the ways of application of philosophical knowledge by criminal law specialists. As it is known, philosophical teaching helps to understand the essence of specific phenomena or events with the help of appropriate tools, forming a complete picture of existence and its components. Such a doctrine is necessary today for those who produce exclusively scientific and legal knowledge in any objective form and those engaged in lawmaking and law-enforcement activities. Science has always demanded philosophical thought of criminal law, and their close relationship is traced in the most significant works of prominent philosophers since ancient times. The authors emphasize the unique value of philosophical teachings of the ancient period for modern criminal law, which, even nowadays, is based mainly on the postulates of the philosophers of Ancient Greece and Ancient Rome. The conceptual foundations of these philosophical views have demonstrated their significance over the millennia, and this study highlights the need for their scientific rethinking and the use of the latter's results in legislative and law enforcement activities. Rethinking the philosophical works of the Antique period by modern lawyers will allow us to clearly build a hierarchy of values protected in the modern world, confirm the principles of the rule of law, and rationally assess the role of criminal punishment and other criminal legal institutions.

Keywords: philosophy, doctrine, knowledge, crime, punishment, science, Antiquity

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Воззрения философов античности и современное уголовное право

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Аннотация. В исследовании подчеркивается востребованность философии уголовного права как таковой, а также раскрываются способы применения философских знаний специалистами уголовного права. Философское учение, как известно, помогает познавать суть тех или иных явлений или событий с помощью соответствующего инструментария, складывая цельную картину бытия и составляющих его компонентов. Такое учение необходимо сегодня и тем, кто продуцирует исключительно научно-правовые знания, облекаемые в какую бы то ни было объективную форму, так и тем, кто занимается нормотворческой и правоприменительной деятельностью. Философская мысль всегда была востребована наукой уголовного права, и их теснейшая взаимосвязь ярко прослеживается в самых значимых трудах выдающихся философов, начиная с древних времен. Авторы акцентируют внимание на особой ценности философских учений античного периода для современного уголовного права, которое и в настоящее время во многом опирается на постулаты философов Древней Греции и Древнего Рима. Концептуальные основы этих философских воззрений продемонстрировали свою значимость на протяжении тысячелетий, при этом в данном исследовании отмечается необходимость их научного переосмысления, а также использования результатов последнего в законодательной и правоприменительной деятельности. Переосмысление философских трудов Античного периода современными юристами позволит четко выстроить иерархию защищаемых в современном мире ценностей, подтвердить принципы верховенства права, рационально оценить роль уголовного наказания и иных уголовно-правовых институтов.

Ключевые слова: философия, учение, знание, преступление, наказание, наука, Античность

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Introduction

At the beginning of this century, problems of sufficient scientific validity of various branches of socio-humanitarian knowledge have emerged. Many social sciences and humanities are unable to overcome scholasticism and increasingly give rise to long and not consistently productive discussions, where the arguments in the dispute are based on the authority and scientific merits of their participants, rather than on the facts of reality, obtained with the help of genuinely scientific research methods. The verifiability of the obtained research results and their practical applicability to achieve a socially helpful goal (instrumentalization) are integral to scientific knowledge. The socio-humanitarian sciences, including legal sciences, should improve their epistemological potential since transforming them into a kind of "thing in itself" sharply reduces their scientific authority and attractiveness for new followers. Moreover, even within the same specialty, its constituent sciences demonstrate inexplicable autonomy, leading to their inconsistency. An example is the detachment of the science of criminal law from the science of criminal procedure [1. P. 109]. In such circumstances, it is critically important to the interdisciplinarity of the epistemological approach of any legal science, including the science of criminal law, which in no case means the rejection of the philosophical foundation of criminal law laid by the greatest thinkers of the ancient period, such as Protagoras, Aristotle, Plato, Seneca, Cicero, and the durability of which has been tested for centuries.

Philosophical doctrine, as it is known, helps to cognize the essence of specific phenomena or events with appropriate tools, forming a complete picture of existence and its components. Such a doctrine is necessary today for those who produce exclusively scientific and legal knowledge in any objective form and those engaged in lawmaking and law-enforcement activities.

Methodology

The methodology of this study is based on the method of materialistic dialectics, which allows a comprehensive consideration of a phenomenon in the dynamics of its development in the process of evolution and acquisition of new qualitative and quantitative features. The general scientific methods used are analysis and synthesis, inductive, deductive, and structural-functional methods, and the specific scientific methods are formal-logical, comparative-legal, and comparative-historical.

Main study

Complex anthropogenic activity should be based on the principle of scientificity. However, as practice shows, overcoming new global challenges is impossible within the narrow framework of individual branches of science. As V.I. Vernadsky noted in his time, "The growth of scientific knowledge in the 20th century is rapidly erasing the boundaries between individual sciences. We are increasingly specializing not in sciences but in problems. This allows, on the one hand, to go extremely deep into the phenomenon under study, and on the other hand, to expand its coverage from all points of view" [2. P. 54].

The search for answers to critical challenges of socio-humanistic nature objectively causes a change in the scientific community's views on the role of philosophy. Its position in the structure of human culture, according to V.I. Vernadskiy, is "very peculiar" and "connected with religious, socio-political, personal and scientific life inextricably and diversely" [3]. Other Russian thinkers also noted the unique role of philosophy. For example, the famous Russian religious philosopher of the XIX century, V.S. Solovyov, entitled his fundamental work "Philosophical beginnings of integral knowledge". Assessing the methodological significance of this work, J.V. Golik states that it recognizes philosophy as the basis of integral knowledge – "not fragmentary, fragmentary, special and even not systematic, but integral," allowing "to see the whole picture of the surrounding world completely, volumetrically, with all the convexities and roughnesses, with all the advantages and disadvantages" [4. P. 6], where wholeness refers to both "focus" and "integrity" [4. P. 6]. "A correct judgment of the whole" is a message many philosophers use [4. P. 6].

The philosophical justification and content of law in general, and its separate branches in particular, is one of the critical issues actively debated today in domestic legal science. Over the past few years, the scientific and legal literature has been noticeably enriched with studies on this issue. In our opinion, the most significant part of this series is the monograph by S.A. Bochkarev [5], which caused a lively response in the professional community [6. P. 43–48; 7. P. 128–131].

As for the criminal law topic itself, it "fully fits" into the sphere of interests of philosophy, "because it allows us to reflect an important segment of our existence – painful, unnecessary, but at this stage of human development, unfortunately, inevitable" [4. P. 6]. Philosophical thought, as S.A. Bochkarev rightly emphasizes, "never lost sight of the criminal question and always provided a place for it in the constructed pictures of the world. Without it, they remained and were considered incomplete" [8. P. 54]. Representatives of the science of criminal law [4. P. 6] see the demand for philosophy in criminal law, including in the part of philosophical comprehension and filling the sphere of combating crime, in the impact on the latter in the conditions of "rapidly changing reality": almost complete desistematisation of the Criminal Code of the Russian Federation, total de-studying of criminal law, changes in the structure and nature of the crime, the transition of the latter into

virtual space, which, in turn, calls into question the sufficiency of traditional criminal law in the context of the "rapidly changing reality" [4. P. 6]. Hence, the natural conclusion is about the unique importance of philosophical training of specialists in this field.

Returning to the issue of interaction between law and philosophy, we note that even a superficial reference to the works that constitute the treasury of world philosophical thought, such as Plato's "State" and "Laws," Aristotle's "Ethics" and "Politics," Cicero's "On the State" and "On Laws," Thomas Aquinas' "Summa Theologica" and "On the Rule of Sovereigns," Hugo Grotius' "On the Law of War and Peace", F. Bacon's "Leviathan" and "The Philosophical Foundations of the Doctrine of Citizenship." Bacon, "Leviathan..." and "The Philosophical Foundations of the Doctrine of Citizenship" by T. Hobbes, "Treatise on Universal Justice" by F. Hobbes, "Treatises on Government" by J. Locke, "On the Spirit of the Laws" by S. Montesquieu, "The Social Contract..." by J.-J. Rousseau, "The Social Contract..." J.-J. Rousseau, Kant's Metaphysics of Morals, Hegel's Philosophy of Law, and Fichte's Foundations of Natural Law and System of Moral Teaching testify to its centuries-long history. Just "...the names alone convincingly and justifiably declare the incomparable scale and powerful intellectual force of these works, their unconditional usefulness for legal thought" [9. P. 132]. On the contrary, the desire to give the constructed universals or concepts of being a holistic or complete form, the achievement of which is impossible without the elements constituting the essence of law, determines the attention to the law on the part of philosophers.

However, despite the obvious usefulness of this relationship, the philosophical basis of law causes wariness among modern jurists. As S.A. Bochkarev notes, "Jurists remain devoted to dogmatism, seeing ambivalence – boundless ambiguity, and abstractness – inordinate abstraction or instability as the main and not the best in understanding jurists property of the philosophical field. The template of their view does not cover the whole philosophical diversity" [10. P. 208], and many people, following E. Ferri, ask: "How can you not see the necessity to remove criminal law and the social function it is supposed to regulate from the sphere of philosophical disputes?" [11. P. 301].

But as we know, philosophical comprehension of the world began many millennia ago, long before the emergence of science. Therefore, A.A. Ter-Akopov's conclusion that "knowledge of the Law is a prerequisite for cognition of the world" [12. P. 41] acquires special significance.

It is evident that the use of philosophical knowledge in law is complicated by the presence of a wide range of philosophical doctrines, conceptually different from each other. This is all the more relevant for modern Russia, given the rejection of the dogmas of the long-dominant Marxist-Leninist philosophy in solving problems of socio-humanitarian nature.

The search for an answer to the question about the ways and possibilities of applying philosophical knowledge by criminal law specialists in their professional

activities of scientific, educational, normative, and law enforcement nature implies going beyond epistemology and turning to the structure of modern philosophical knowledge, covering ontology, gnoseology, and axiology [13. P. 3–25].

Ontology is the doctrine of being, of being, reasoning about "being as such," as Aristotle defined it, or about being what is (all kinds of being in general, ta onta, not the individual being of someone or something) [14. P. 375]. According to A. Kont-Sponvil philosophers (except for the followers of Heidegger's doctrine) consider ontology to be a part of metaphysics, which, in its turn, can be understood as everything that is beyond the competence of physics (in a broader sense, beyond experimental and thus scientific and empirical cognition). Engaging in metaphysics means thinking further than cognition extends and thinking about things that are impossible to comprehend, i.e., one should think as far as possible [14. P. 375]. At first glance, the phrase "metaphysicality of criminal law" nowadays would sound like nonsense: the mere institution of necessary causation in criminal law is already incompatible with metaphysical doctrines. However, upon closer examination, such a categorical judgment will require its correction.

It seems appropriate to turn to the origins of law, namely, its religious roots, to demonstrate this statement. The primary and inviolable postulate of existing religious and legal systems is the Almighty grants that law: only the Almighty is the true legislator, the actual creator of law, and secular authorities only fulfill the will sent down by heaven. The Holy Books set forth the basic rules of behavior, which cannot be subjected to any revision or change by the state authority, whose laws and judicial decisions cannot contradict the dictates of the Almighty. It is no coincidence that the most serious offenses in Islamic criminal law include the offenses of hadd. Most modern scholars understand "hadd" offenses to mean responsibility for acts that infringe on the "rights of Allah" or the interests of the entire community. The Qur'an or Sunnah determines the penalties for these offenses – the judge merely determines the existence of the offense and imposes the only possible punishment. The judge's discretion in imposing such penalties is nil. It should be noted that such classification also manifests the relevant axiological origin: e.g., one of the criteria for classifying values presented by M. Sheler was the degree of proximity to God (the value is the higher the closer it is to the Almighty) [15. P. 308–318, 323–328].

The "metaphysicality" of criminal law is also manifested in the existence of norms establishing responsibility for witchcraft, sorcery, dealings with the devil, etc. At first glance, in the modern world, the existence of such norms is perplexing. Nevertheless, the history of Russian law confirms the existence of criminal laws, where such acts were considered crimes. One example of this is the Military Article of Peter I in 1715, which provided for criminal punishment for sorcery and witchcraft [16. P. 753].

Philosophers, like criminologists, have been preoccupied with the causes of crime and individual criminal behavior for centuries. The classical formula of philosophy explaining the mechanism of such behavior, most successfully,

expressed by I.M. Ragimov, sounds as follows: "Who committed a crime – could not have committed it. He freely chose evil and must be punished; if there was no freedom of choice, there could be no punishment" [17. P. 140–158]. Without critically analyzing this formula (representatives of such sciences as sociology, psychology, and biology are unlikely to agree), let us cite its metaphysical antithesis: "Man commits a crime under the influence of the devil's wiles." In this paradigm, crime is the result of the forces of Evil, and the criminal is only their instrument.

In turn, gnoseology is a theory of cognition; philosophy of cognition (gnosis) [14. P. 129], the tasks of which include describing types of knowledge, explaining the possibility of knowledge, clarifying the cognitive meaning of basic concepts, and determining the boundaries of knowledge [18. P. 133].

According to S.A. Bochkarev, the low level of use of gnoseological experience is explained by a small number of interdisciplinary studies that ensure the circulation and cross-fertilization of different spheres of knowledge, and this, in turn, leads to the fact that we do not know the gnoseology of criminal law, about the possibilities of obtaining them for science [19. P. 34]. Gnoseology develops the methodology of scientific cognition, which provides clarity of consciousness and correct thinking. Methodology reproduces the rules that ensure: 1) agreement of thinking with itself (elements of knowledge with each other); 2) identity of concept and object; 3) correspondence of perception and fact; 4) correspondence of reality and knowledge about it. The fundamental characteristics of methodology include coherence or correspondence, or comprehensive harmony, integrity and systematicity. Through compliance with these factors, scientific knowledge's validity, reliability and objectivity, and its distinction from other types of knowledge and cognition are ensured [19. P. 34]. The special importance of the methodology of criminal law lies in comprehending reality and describing ways of its transformation [4. P. 8].

The need to improve the methodological apparatus of criminal law (and in general, all legal sciences of the so-called "criminal cycle", criminal legal sciences) has been repeatedly discussed in the scientific literature. According to several scientists, it is necessary to move away from the prevailing (in their opinion) logical and dogmatic method of research and to rely on statistical, mathematical, and sociological methods [20]. The interdisciplinarity of knowledge means interdisciplinarity in the methods of cognition. However, it is evident to a specialist that modern criminal law uses in its arsenal the knowledge of medicine (the institution of insanity and compulsory measures of medical nature), psychology (the institution of guilt), pedagogy (the institution of compulsory measures of educational influence) and other sciences.

Axiology, as a component of philosophical knowledge, is the doctrine of values and the study of values. The axiological foundations of criminal law are manifested in various institutes of its General and Special Parts: here, as an example, we can cite the principle of equality of all citizens before the law, which

speaks of equal rights and obligations of all people before the criminal law (although it should be emphasized that some exceptions to this principle are found in the Criminal Code of Russia).

The axiological principle in criminal law is most clearly manifested in the norms on circumstances precluding a deed's criminality. For example, the essence of the institute of extreme necessity is to save a more valuable good by causing harm to a less valuable good.

The study of the main stages of philosophical understanding of its essence, methodological foundations, and key institutions allows us to separate the real values of criminal law from ephemeral ones. Philosophy of criminal law, according to one of the periodizations recognized in science [21], in its consistent development covers the stages from the views of thinkers of Antiquity and representatives of the Middle Ages to the criminal law theories of the times of G. Grotius – J.-J. Rousseau, C. Beccaria – P. Feuerbach, and I. Bentham – I. Herbart, G. Hegel – K. Binding.

In the context of our study, the Ancient period is of particular importance, the quintessence of which was subtly captured by Michael A. Soupios, noting that the ancient "Greeks made us who we are" [22]. Indeed, at this time, the ideas that laid down the common starting points of modern law in general, and criminal law in particular, emerged. Moreover, some ideas of ancient philosophers in this area have not only not lost their theoretical significance but also remain in demand today by the state and law enforcement practice.

The first attempts to rationalize the ancient Greek views on law, which emerged from mythological ideas about the divine in nature Supreme Truth, justice (Dike) as an objective basis and criterion of customary law (Themis) and influenced the formation of ancient Greek thinkers' ideas about the nature of punishment, its moral usefulness, can be traced in the poems of Homer and Hesiod

However, the "seven wise men," already overcoming the framework of established ideas, call for "obeying the laws," embodying the supreme power. Furthermore, when rethinking the idea of punishment, a question that is one of the most complex and debatable in the modern science of criminal law, they interpret inevitable divine punishment not as a plague or crop failure but as something immanent to the social order, its disorder caused by any violation of the law [23. P. 213, 221–222].

In turn, the most prominent representative of sophists, Protagoras, developed these ideas, asserting the impossibility of the existence of human society without honoring law and order and suggesting refusing retribution as an idea of punishment. Much ahead of his time, he considered not revenge and retribution but the punishment that made the guilty person better [9. P. 132]. The possibility of educating virtue as a preventive measure to combat crime is in demand nowadays. Along with it, it is impossible not to note the "surprising modernity" [24. P. 48] of the ideas put forward by Sophists about the equality of all before the law, the need to know the latter and obey them, civic virtue based on justice and prudence,

a precise formulation of the principle of humanism, which were further developed in the works of Plato, Aristotle, and representatives of various philosophical schools of antiquity. Some were not simply adopted by modern criminal law but were enshrined as principles defining its content and foundations.

Here, we should also mention the contribution of Plato (whose classification of murders and differentiation of criminal responsibility for their commission has still not lost its significance), who emphasized that no one should remain unpunished for his misdeed "even if the perpetrator has fled outside the state," to the formation of the principle of inevitability of responsibility and the principles of the operation of the criminal law in space and the circle of persons [25. P. 8–15].

Understanding the origin of punishment and the search for grounds for its application from the position of the state is the main criminal law problem that was the focus of the attention of ancient philosophers. A broader approach to its development, including the view from the other side – from the position of the criminal, who must be punished – distinguishes the concept of Aristotle, recognized as the most useful for criminal law. Giving the individual independent rights, allowing the possibility of their opposition to the interests of the state, distributive justice as the basis of punishment, and deterrence as its purpose – not all the ideas of Aristotle, which have already made an invaluable contribution to the theory of criminal law. At the same time, the development of criminal law in the XXI century needs a significant expansion of the existing body of knowledge in this field, including through rethinking, as a result of which the Aristotelian concept is recognized as practical, for example, to address the current problem of populism in the field of criminal law and can serve as a starting point for the development of some solutions aimed at preventing the consequences of the phenomenon in the field of criminal justice [26]; to contribute to the effectiveness of the latter [27], and the Aristotelian concept can be used even as a basis for the development of a new theory of criminal law [26] and as a development tool for the concept of ecocide as a crime against humanity [28. P. 28–40].

The results of the reinterpretation of the works of the Stoics, Epicureans, and Sceptics, who had long been in the shadow of their great predecessors, are also of undoubted interest. Thus, for example, a new "clearer and less paradoxical meaning" is acquired by the Stoics' doctrine of crime and punishment in determining other possible meanings of the notion of ἁμάρτημα, in the postulate of the equality of all misdemeanors. The hypothesis interpreting this concept in the modern meaning of the word "guilt" allows establishing correlations between it and the Stoic concepts of crime, motive, circumstances, and punishment: anyone who commits a crime is guilty; the punishment should be imposed, not based on guilt but on the number of offenses (actions); guilt cannot have any degrees; the court under certain circumstances (even in the case of patricide) cannot find a guilty person guilty [29. P. 84–95]. Such a contribution to the history of philosophical and legal ideas about guilt becomes especially relevant in the search for a new concept of guilt in criminal law [30. P. 93–99].

As mentioned above, the period of development of the philosophy of law formed the intellectual basis for the ancient Roman thinkers, who adapted the best of Greek philosophy to Roman circumstances. Although Roman philosophy did not develop a system of its ideas about criminal law, its most prominent representatives contributed to its development.

Identifying the ontological foundations of crime and punishment, i.e., the principles of their functioning rooted in existence itself, is a key achievement of Cicero. The philosopher considers ethical factors – aversion to crime, honor, justice – the primary means of counteracting crime, while punishment is not. At the same time, the latter was considered by him necessary because its absence was regarded as "the greatest encouragement of crime."

The views of Seneca, who in turn defended the thesis of natural justice, the proofs of which, in his opinion, are close to the same: anxiety, fear, and conscience as the most profound basis of punishment. The idea of "foundations" as a measure for checking and evaluating the correctness of actions, which in its orientation and level of validity is equal to establishing a criminal code, is an indisputable merit of the latter.

For this article, pure criminal law ideas and other views of these philosophers are relevant. For example, developing the legal ideas of his predecessors, Cicero derives the law (customary law) from the Stoic virtues: reasoning, justice, beneficence and moderation. In his opinion, the properties of law as the basis for a strong state are the right of choice and justice, understood from the standpoint of usefulness for all Roman citizens. Equating right (law) with honesty and disenfranchisement (absence of law) with shame, Cicero links these concepts with the categories of good and evil [31. P. 32–41], thus having "a great influence on the formation of the moral vocabulary of modern times" [32. P. 19–31], in particular, the concepts of justice and legality, which are also the initial provisions of modern criminal law. The need to analyze criminal legislation to identify and eliminate its shortcomings, based on these principles, will never lose its relevance.

Another no less urgent practical task of criminal law is to protect human dignity, and the theoretical task is to establish the certainty of the content of this idea. Researchers do not often note the contribution of Roman philosophers to its development. While Cicero, one of the first to use the phrase "human dignity," even if not yet correlating it with the idea of the inviolability of life, has not the last place here. Proceeding from the fact that every person has dignity, the thinker also concluded about the dignity of human collectives (understanding them as honest and resilient peoples), including the state, emphasizing that the more dignified people in the state, the higher its dignity [33. P. 19].

Conclusion

The interdisciplinarity of criminal law as a specific social regulator is manifested in the fact that its cognitive toolkit today cannot rely only on speculative

conclusions and be built solely on a logical and dogmatic foundation. The evolution of legal sciences dictates the need to use various methods of cognition, which are not limited only to the framework of humanitarian branches of knowledge. We are witnessing how criminal law, in the course of its development, relies on the achievements of economics, psychology, psychiatry, statistics, history, and other sciences. At the same time, the philosophical foundations of criminal law must remain inviolable, which allows the development of its epistemological potential, allows us to understand the ontology of certain criminal legal phenomena, and allows us to build a hierarchy of protected benefits based on an axiological basis.

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